

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of Section 309(j)) PP Docket No. 93-253
of the Communications Act -)
Competitive Bidding)

PETITION FOR RECONSIDERATION

Century Telephone Enterprises, Inc. ("Century") hereby submits its Petition for Reconsideration of the Fifth Report and Order in the above-captioned proceeding.¹ Specifically, Century seeks reconsideration of the definition of "rural telephone company" to allow local exchange carriers meeting the following three-prong test to geographically partition broadband PCS licenses. First, rural telephone carriers should have 100,000 or fewer access lines per FCC study area. Second, rural exchange should be defined to include exchanges with fewer than 10,000 access lines. Third, a rural telephone company should have no single exchange with more than 10,000 access lines within that study area. As detailed below, this action is necessary to achieve the Commission's objective of speeding deployment of PCS to all communities in the United States, including rural areas.

¹ Implementation of Section 309(j) of the Communications Act - Competitive Bidding, FCC 94-178 (July 15, 1994). Public Notice of the Fifth Report and Order was given at 59 Fed. Reg. 37566 (July 22, 1994).

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I. THE FIFTH REPORT AND ORDER'S DEFINITION OF "RURAL TELEPHONE COMPANY" IS OVERLY RESTRICTIVE

In adopting a "rural telephone company" definition for purposes of the broadband PCS auctions, the Commission sought "to achieve the congressional goal of promoting the rapid deployment of this new service in rural areas by targeting only those telephone companies whose service territories are predominantly rural in nature, and who are thus likely to be able to use their existing wireline telephone networks to build broadband PCS infrastructures to serve rural America."² After evaluating a number of options, the agency concluded that this goal would best be accomplished by defining "rural telephone companies as those local exchange carriers having 100,000 or fewer access lines, including all affiliates."³

To further ensure that rural areas receive the benefit of PCS, the Fifth Report and Order establishes a partitioning plan whereby companies that satisfy the rural telephone definition may acquire geographically partitioned broadband PCS licenses in any frequency block. To do so, rural telcos may either form bidding consortia among themselves and then partition the licenses won at auction among consortia participants or they may acquire partitioned broadband PCS licenses from other licensees through private negotiation and

² Fifth Report and Order at ¶ 190.

³ Id.

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agreement pre- or post-auction.⁴ If rural telco consortia are formed to bid on the entrepreneurs' licenses on blocks C and F, however, the cumulative gross revenues and assets of the consortium members may not exceed the financial caps for eligibility in those blocks. The FCC concludes that:

[a]llowing partitioning of rural areas served by rural telephone companies provides a viable opportunity for many of these designated entities who desire to offer PCS to their customers as a complement to their local telephone services. For example, rural telephone companies who cannot afford or who do not desire to bid for or construct PCS systems for an entire BTA can thus acquire licenses in areas they wish to serve or form a bidding consortia and partition the entire BTA among themselves.⁵

Century strongly agrees that "rural partitioning is an efficient method of getting a license in the hands of an entity that will provide rapid service to rural areas."⁶ Unfortunately, the FCC's current rules will effectively preclude many rural telcos from taking advantage of this opportunity. Far from "includ[ing] virtually all of the telephone companies who genuinely are interested in providing services to rural areas,"⁷ the rural telco definition contained in the Fifth Report and Order will prevent

⁴ Id. at ¶ 151.

⁵ Id. at ¶ 152.

⁶ Id.

⁷ Id. at ¶ 198.

companies, such as Century, with legitimate interests in providing PCS in their pre-existing, rural service areas as a low-cost, more efficient means of ensuring universal coverage⁸ from qualifying for this measure merely on the basis of their size. Yet Century is precisely the type of rural telephone company that Congress meant to protect as it is "truly rural in nature."⁹

As a practical matter, many companies above the 100,000 access line threshold continue to serve predominantly rural areas despite incremental increases in size. For example, Century's 434,000 access lines serve rural areas in fifteen states, with no more than 4 percent of the subscribers in any state. Each of Century's 35 operating companies has less than 100,000 access lines. Indeed, Century's largest subsidiary has approximately 69,000 access lines while the smallest subsidiary has 225 access lines.

Century believes that PCS will prove invaluable in promoting the Commission's universal service goals. Use of radio-based links can permit the establishment of service where wire-based facilities otherwise would be practically or

⁸ In many areas, PCS would be less costly to provide than copper wire. The radio and related equipment necessary to bring PCS-based telephone service to a subscriber located in a remote, mountainous, or other isolated area can be purchased and installed for less than the cost involved with laying wire-based facilities. Currently, Century utilizes Basic Exchange Telephone Radio Service ("BETRS") technology to serve subscribers in remote locations. PCS would serve as another alternative technology.

⁹ Fifth Report and Order at ¶ 76.

economically infeasible. Similarly, to the extent Century can hold down construction and installation costs, the charges for telephone service will be lower to Century's rural customers.

Absent the availability of partitioning, the Fifth Report and Order limits companies to bidding on 30 MHz Major Trading Area ("MTA") licenses or 10 MHz Basic Trading Area ("BTA") licenses. Given that these licenses "are expected to be auctioned for large sums of money . . . and [that] build-out costs are likely to be high,"¹⁰ Century and other rural telephone companies cannot reasonably be expected to outbid auction participants with far greater resources, such as "the largest telephone companies that do not face similar capital formation problems."¹¹ Similarly, many rural telephone companies simply do not have the resources to meet the build-out requirements for a full MTA or BTA.

Moreover, Century is interested in bringing PCS to its existing local exchange service areas. As a result, in order to serve the local exchange territory, Century (like many other rural telephone companies) has limited interest in serving an entire MTA or BTA that encompasses a much larger area than its existing local exchange service area. Given these factors, the ability of Century and other rural

¹⁰ Fifth Report and Order at ¶ 96.

¹¹ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, FCC 94-215, (rel. Aug. 15, 1994) at ¶ 76.

telephone companies to take full advantage of PCS in meeting the needs of their customers will be seriously hampered, contrary to the Commission's stated goals regarding rural access to PCS offerings.¹²

In contrast, the partitioning plan made available to eligible rural telephone companies would enable these operators to utilize existing infrastructure to provide PCS in areas they already serve, "while the remainder of the service area could be served by other [such] providers."¹³ PCS then could be used as an alternative technology to copper wire to cost effectively serve its subscribers and to meet universal service obligations in rural areas, consistent with the financial capabilities of the particular carriers.¹⁴

Century recognizes the Commission's effort to balance ensuring that rural subscribers have access to PCS offerings with its desire not to grant special treatment to entities not needing enhanced opportunities to participate in PCS.

¹² Century believes that many of the rural areas it serves will not be reached by the systems licensed to full MTA or BTA operations. Specifically, such operators will be able to meet their build-out obligations without installing service in such rural areas.

¹³ Id. at ¶ 150.

¹⁴ In this regard, Century requests clarification as to whether carriers will be permitted to partition megahertz under the FCC's rules. For example, rural telephone companies seeking to geographically partition an MTA or BTA will not require 30 MHz to serve the small number of subscribers in their existing service areas. Thus, the Commission should allow partitioning of megahertz within a particular MTA or BTA.

However, an accurate determination of whether an area is rural cannot be made on the basis of affiliation. Accordingly, Century requests that the Commission expand its rural telephone company definition to allow carriers meeting the following three-prong test to geographically partition broadband PCS licenses. First, rural telephone companies should have 100,000 or fewer access lines per FCC study area. Second, such carriers should serve rural exchanges, defined as any exchange with less than 10,000 access lines. Finally, no single exchange within that study area should have more than 10,000 access lines. By allowing partitioning on a per exchange basis rather than a local exchange basis, the Commission will facilitate accomplishment of Congress' directive to ensure the "rapid introduction of service to rural areas."¹⁵

¹⁵ Id. at ¶ 109.

II. CONCLUSION

Century supports the Commission's efforts to facilitate the deployment of PCS in rural areas. For the reasons discussed above, however, Century believes that this objective would be better served by expanding the rural telephone company definition to allow carriers meeting the three-prong test described herein to geographically partition broadband PCS licenses. Such action is warranted to ensure that such companies, who might otherwise be barred from entering the broadband PCS industry if required to bid on entire BTA or MTA licenses, can obtain more defined PCS licenses covering their wireline service areas, thereby enabling them to rapidly introduce PCS in rural areas by utilizing their existing infrastructure.

Respectfully submitted,

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